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OFFICE OF THE HEARING EXAMINER
PIERCE COUNTY

7 Triennial Review Of Hearing Examiner of
8 the Substantial Development Permit for
9 Park Junction Partners;

Conditional Use Permit CP5-96

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MOTION FOR RECONSIDERATION

I. INTRODUCTION

This motion asks for reconsideration of certain parts only of the Report and Decision of the Pierce County Hearing Examiner dated November 14, 2019 ("2019 Decision"). This motion is filed on behalf of the Tahoma Audubon Society ("TAS"). The motion deals with two aspects of the 2019 decision.

II. PHASE I DECISION

Finding No. 8, p. 12x, of the 2019 Decision states that "the applicant submitted and received approval of a "final development plan" within the required five year period." In addition to that finding, paragraph 8 states that the senior planner for Pierce County "conceptually approved the final development plan for the overall project and for Phase 1" and relies for that finding on an email of March 27, 2003 from Mr. Ty Booth. (The original documents in this matter used Roman numerals to identify the separate phases; later references often use Arabic numbers.)

1 The Hearing Examiner also found that Mr. Booth used the word “conceptually” because
2 Mr. Booth believed “the Examiner might make clarifications or changes to the final
3 development plan.” Id. He did not find that reasoning similarly applied to the Phase I
4 development plan.

5 Our request for reconsideration deals with the implication, if not the declaration, by the
6 Hearing Examiner in finding No. 8 that “Phase 1” of the Mount Rainier Resort at Park Junction
7 (“Resort”) was somehow approved in 2003. The record does not support such a conclusion, and
8 a review of the record would indicate that no party to this matter believed that Phase I had
9 already been approved.

10 Phase I of the project is described at page 2-7 of the Final Environmental Impact
11 Statement (“FEIS”) for the Resort, dated September 16, 1999. With regard to Phase I, the FEIS
12 states the following:

13 Appropriate environmental review of subsequent phases will be
14 determined by the lead agency prior to the approval of each phase. The phases
are as follows:

- 15 • **Phase I:** Construction of Mt. Rainier Lodge, a 300-room hotel with
16 18,000 square feet of conference space, indoor and outdoor tennis
17 courts, swimming pool, fitness center spa, and food and beverage
18 outlets. Design, layout and construction of the 18-hole Mt. Rainier
Golf Course. Construction of some site utilities including roads,
water system, sewage treatment plant, and drainage system.

19 The FEIS also describes on the same page Phases II, III, IV, and V.

20 We believe that the Hearing Examiner should revise finding No. 8 so that it does not
21 misleadingly conclude that Phase I has been approved at this point by Pierce County. He also
22 should clarify that the “appropriate environmental review” of Phase I has not yet occurred. In
23 support of this request, we make the following arguments.

1 First, it is clear in the current record that the “appropriate environmental review” of the
2 elements of Phase I has not been completed and that construction plans for the “water system,
3 sewage treatment plant, and drainage system”, and other features have not been approved to
4 date. It is clear that no permits have been issued for construction of “site utilities, including
5 roads, water system, sewage treatment plant, and drainage system.” Indeed, much of the
6 testimony at the most recent hearing, and the subject of many of the emails and memorandums
7 submitted to the County and the Hearing Examiner, deal with proposed revisions to the plans
8 for the water system, the sewage treatment plant, the drainage system, and the wetlands
9 delineation. The proposals for those matters have not been approved. Moreover, final plans for
10 those have not been submitted.

11 No supplemental environmental review of any of the elements of Phase I has been made.
12 As we argued earlier to the Hearing Examiner, most of the environmental analysis for this
13 project was completed in 1997, and the original decision of the Hearing Examiner was based
14 on evidence provided to him in 2001, almost two decades ago. How could Pierce County have
15 approved development and construction of Phase I without this additional analysis haven taken
16 place?

17 Second, at no time has Pierce County definitely stated that it had approved development
18 of Phase I. Mr. Booth’s statement in a March 27, 2003 email that he “conceptually
19 approved...Phase I” does not constitute approval of Phase I.

20 “Conceptually” is an adverb, related to the adjective “conceptual”. “Conceptual” is an
21 adjective that means “pertaining to concepts or to the forming of concepts.” Random House
22 Dictionary of the English Language (Ed. 1968, P. 278). See also Random House Webster’s
23 College Dictionary (2d Ed., 1997), 272.

1 “Concept” means a “general notion or idea; conception.” Random House Dictionary, at
2 278. Approval of a “general notion or idea” in a land use context is not approval of a
3 development plan for a phase of a development. Mr. Booth’s conceptual approval of Phase I
4 constitutes no definitive approval at all.

5 Third, Mr. Booth’s email of March 27, 2003 is unreliable for another reason. The email
6 used a past tense to state that he previously approved something: “I have conceptually
7 approved.” Is there another document in which Mr. Booth “approved” either the final
8 development plan or Phase I? If not, then the only document that states that approval is the
9 email of March 27, 2003 and it does not constitute such an approval.

10 Fourth, none of the parties have acted as though the development plans for Phase I have
11 already been approved by the County. We can cite a number of examples. For example, the
12 applicant itself submitted materials indicating that Phase I has not yet been approved. We ask
13 the Hearing Examiner to review the most recent memorandum of October 14, 2019 by Mr.
14 Lynn (referred to in the 2019 Decision). Mr. Lynn’s proposed third milestone is as follows:
15 “Within 30 days following approval by Pierce County of the Site Development Plan for Phase
16 I,” the applicant will begin construction on the site (Emphasis added.) This statement presumes
17 – correctly – that approval of the site development plan for Phase I has not yet occurred.

18 As another example, Mr. Lynn has proposed that revised plans for the wetland impact
19 areas be submitted in February of 2020, and that such “plans are required for the Site
20 Development Permit Application currently under review for Phase I.” (Emphasis added.)

21 It is clear that the proposed development plan for Phase I has not yet been approved by
22 Pierce County. Consequently, we ask the Hearing Examiner to revise his decision on this issue
23 in two respects. First, that he clarify that the County has not yet approved plans for Phase I.

1 Second, we ask him to require the County to perform a supplemental environmental review for
2 Phase I as one of these “subsequent phases” set out in his original decision. This would
3 necessitate, as we argued in our opening memorandum, a revised environmental analysis
4 regarding traffic, wetlands, and other matters.

5 **III. DEADLINES**

6 Conclusion No. 3 (p. 20x) of the 2019 Decision states that “ the applicant now
7 provides measurable bench marks going forward.” Id. The Hearing Examiner further
8 concludes that the applicant should be given “an opportunity to meet proposed milestones set
9 forth in Exhibit 32.” He also encourages Pierce County and the relevant state agencies to
10 “establish milestones for future progress with the understanding that if such are not met, a
11 revocation will be commenced.”

12 We ask the Hearing Examiner to revise his 2019 Decision on this point in two
13 respects. First, we ask that he establish the deadlines (or bench marks or milestones) in his
14 decision, rather than rely on the language found in the applicant’s memorandum, which
15 language might be subject to varied interpretations. Second, we ask that he firmly conclude
16 that failure to meet the scheduled dates that we propose for the revised decision result in
17 automatic revocation of the Conditional Use Permit (“CUP”) in this matter.

18 We propose the following:

- 19 1. February 1, 2020: the applicant shall submit a final and complete wetland
20 mitigation plan, and a final and complete stormwater engineering plan.

21 Both plans must comply with all applicable regulations, including the
22 applicable “stormwater manual”.
23

2. March 15, 2020: Final and complete wetlands delineations must be submitted to Pierce County, the Department of Ecology, and the U.S. Corps of Engineers.

Failure to meet these deadlines will constitute a failure to meet the conditions of the CUP and the Hearing Examiner decision. Disapproval by any of the agencies referred to above also will constitute failure to meet conditions of the CUP and the Hearing Examiner decision. Such a failure or disapproval will cause automatic revocation of the CUP.

IV. CONCLUSION

We are asking that only two aspects of the 2019 Decision be reconsidered. The Hearing Examiner's thorough and fair summary of the evidence submitted to him is commendable. Neither he nor the County bears the blame for the slow – one might say “glacial” – progress of the Park Junction development. That responsibility lies with the applicant.

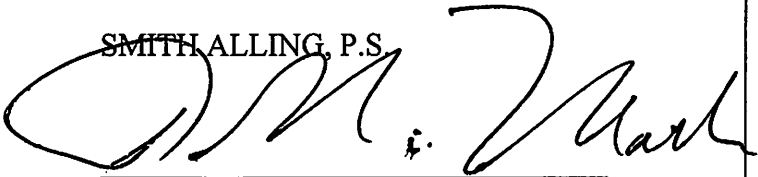
The time has passed when future failure to perform by the applicant should result merely in a recommendation that County staff ask – or even plead – with their superiors to initiate a revocation of the permit here. Frankly, we are concerned that such an eventuality might be subject to political pressure – after all, a sitting County Council member earlier testified against revocation (see 2014 Decision, p. 6x) – and that County staff will be deterred from doing the right thing.

Repeated failure deserves firm consequences. A student who repeatedly fails to pass tests is expelled. A lawyer who repeatedly fails to meet court deadlines is fined. An employee who repeatedly doesn't show up for work is dismissed. This applicant's failure to comply

1 with previous requirements also should have firm consequences. We commend the Hearing
2 Examiner's effort in Conclusion No. 3 to establish those consequences. We respectfully
3 request that he strengthen them.

4 Respectfully submitted this 20th day of November, 2019.

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6 SMITH ALLING, P.S.

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8 Robert E. Mack, WSBA No. 6225
9 Attorney for Tahoma Audubon Society
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